
TITLE 326 AIR POLLUTION CONTROL DIVISION

**FINDINGS AND DETERMINATION OF THE COMMISSIONER
PURSUANT TO [IC 13-14-9-8](#) AND DRAFT RULE
LSA Document #13-502****AIR QUALITY DESIGNATIONS FOR THE 2010 SULFUR DIOXIDE (SO₂) PRIMARY NATIONAL AMBIENT AIR QUALITY STANDARD (NAAQS)****PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for amendments to [326 IAC 1-4](#) to add federal designations for the 2010 sulfur dioxide (SO₂) primary standard. IDEM is soliciting written comment on the draft rule language and will schedule a public hearing before the Environmental Rules Board (board) for consideration of adoption of these rules.

CITATIONS AFFECTED: [326 IAC 1-4](#).

AUTHORITY: [IC 13-14-8](#); [IC 13-17-3-4](#); [IC 13-17-3-11](#); [IC 13-17-3-14](#).

STATUTORY REQUIREMENTS

[IC 13-14-9-8](#) recognizes that, under certain circumstances, it may be appropriate to reduce the number of public comment periods and public hearings usually provided for under the [IC 13-14-9](#) environmental rulemaking process. In cases where the commissioner determines that there is no reasonably anticipated benefit from a second public comment period and first public hearing to either the environment or persons regulated or otherwise affected by the proposed rule, IDEM may forgo these comment periods and proceed directly to the public hearing and board meeting at which the draft rule is considered for adoption. Two opportunities for public comment (with this notice and at the public hearing prior to adoption of the rule) remain under this procedure.

If the commissioner makes the determination of no anticipated benefit required by [IC 13-14-9-8](#), the commissioner shall prepare written findings and publish those findings in the Indiana Register prior to the board meeting at which the draft rule is to be considered for adoption and include them in the board packet prepared for that meeting. This document constitutes the commissioner's written findings pursuant to [IC 13-14-9-8](#).

The statute provides for this shortened rulemaking process if the commissioner determines that:

(1) the rule constitutes:

(A) an adoption or incorporation by reference of a federal law, regulation, or rule that:

(i) is or will be applicable to Indiana; and

(ii) contains no amendments that have a substantive effect on the scope or intended application of the federal law or rule;

(B) a technical amendment with no substantive effect on an existing Indiana rule; or

(C) an amendment to an existing Indiana rule, the primary and intended purpose of which is to clarify the existing rule; and

(2) the rule is of such nature and scope that there is no reasonably anticipated benefit to the environment or the persons referred to in [IC 13-14-9-7\(a\)\(2\)](#) from:

(A) exposing the rule to diverse public comment under [IC 13-14-9-3](#) or [IC 13-14-9-4](#);

(B) affording interested or affected parties the opportunity to be heard under [IC 13-14-9-3](#) or [IC 13-14-9-4](#);

and

(C) affording interested or affected parties the opportunity to develop evidence in the record collected under [IC 13-14-9-3](#) and [IC 13-14-9-4](#).

BACKGROUND

The purpose of this rulemaking is to update the designation tables in [326 IAC 1-4](#) to be consistent with the federal designations for Indiana counties in the Code of Federal Regulations (CFR) at 40 CFR 81.315. State air permits must be issued in accordance with the designations in [326 IAC 1-4](#) or an effective emergency rule that supersedes the existing state rule. Because certain permitting requirements are different for attainment or nonattainment areas, it is critical that the state rules reflect the correct designation status.

On June 22, 2010, a final rule revising the primary SO₂ NAAQS was published in the Federal Register (FR) at 75 FR 35520, and became effective on August 23, 2010.² The standard was revised to a new 1-hour SO₂ standard at a level of 75 parts per billion (ppb).

On August 5, 2013, the United States Environmental Protection Agency (U.S. EPA) published air quality designations for the 2010 SO₂ primary NAAQS. This rule was issued to identify certain areas in the United States that showed violations based on recorded air quality monitoring data, or that contribute to a nearby area that does not meet the SO₂ NAAQS. In Indiana, these areas consist of: Center, Perry, and Wayne townships in Marion

County; Clay and Washington townships in Morgan County; Veale Township in Daviess County; Washington Township in Pike County; and Fayette and Harrison townships in Vigo County.

At this time, IDEM proposes to add the partial counties with nonattainment designations to [326 IAC 1-4](#). This rulemaking will add the federal designations for Indiana for the 2010 SO₂ NAAQS and ensure that sources can be properly permitted according to attainment designation.

[IC 13-14-9-4](#) Identification of Restrictions and Requirements Not Imposed under Federal Law

No element of the draft rule imposes either a restriction or a requirement on persons to whom the draft rule applies that is not imposed under federal law. This draft rule imposes no restrictions or requirements because it is a direct adoption of federal requirements that are applicable to Indiana and contains no amendments that have a substantive effect on the scope or application of the federal rule.

Potential Fiscal Impact

Because this is an incorporation of existing federal law, no impact beyond that already imposed by the federal law is imposed by this rulemaking. Therefore, there will be no fiscal impact from the implementation of this rulemaking.

Public Participation and Work Group Information

At this time, no work group is planned for the rulemaking. If you feel that a work group or other informal discussion on the rule is appropriate, please contact Zachary Ruzycski, Rule Development Branch, Office of Legal Counsel at (317) 232-8229 or (800) 451-6027 (in Indiana).

Small Business Assistance Information

IDEM established a compliance and technical assistance program (CTAP) under [IC 13-28-3](#). The program provides assistance to small businesses and information regarding compliance with environmental regulations. In accordance with [IC 13-28-3](#) and [IC 13-28-5](#), there is a small business assistance program ombudsman to provide a point of contact for small businesses affected by environmental regulations. Information on the CTAP program, the monthly CTAP newsletter, and other resources available can be found at:

www.in.gov/idem/ctap

For purposes of [IC 4-22-2-28.1](#), small businesses affected by this rulemaking may contact the Small Business Regulatory Coordinator:

Jessica Faust-Hamblin
IDEM Small Business Regulatory Coordinator
MC 60-04 IGCS W041
402 West Washington Street
Indianapolis, IN 46204-2251
(317) 232-8172 or (800) 988-7901
ctap@idem.in.gov

For purposes of [IC 4-22-2-28.1](#), the Small Business Ombudsman designated by [IC 5-28-17-5](#) is:

Eric P. Shields
Indiana Economic Development Corporation
One North Capitol, Suite 700
Indianapolis, IN 46204
(317) 234-3997
smallbizombudsman@iedc.in.gov

Resources available to regulated entities through the small business ombudsman include the ombudsman's duties stated in [IC 5-28-17-5](#), specifically [IC 5-28-17-5\(9\)](#), investigating and attempting to resolve any matter regarding compliance by a small business with a law, rule, or policy administered by a state agency, either as a party to a proceeding or as a mediator.

The Small Business Assistance Program Ombudsman is:

Brad Baughn
IDEM Small Business Assistance Program Ombudsman
MC 50-01 IGCN 1301
100 North Senate Avenue
Indianapolis, IN 46204-2251
(317) 234-3386 or (800) 451-6027
bbaughn@idem.in.gov

FINDINGS

The commissioner of IDEM has prepared findings regarding rulemaking on designation of Indiana counties for the 2010 SO₂ primary standard as required by federal rule. These findings are prepared under [IC 13-14-9-8](#) and are as follows:

- (1) This rule is the direct adoption of federal requirements that are applicable to Indiana and it contains no amendments that have a substantive effect on the scope or intended application of the federal rule.
- (2) Indiana is required by federal law to adopt the designation of Indiana counties for the 2010 SO₂ primary

standard as established by U.S. EPA.

(3) The environment and persons regulated or otherwise affected by the proposed rule will benefit from prompt adoption of this rule, because it will ensure that state rules are consistent with federal regulations.

(4) I have determined that, under the specific circumstances pertaining to this rule, there would be no reasonably anticipated benefit to the environment or to persons regulated or otherwise affected by the proposed rule from the first or second written comment period under [IC 13-14-9-3](#) or [IC 13-14-9-4](#), or from the first public hearing under [IC 13-14-9-5\(a\)\(1\)](#).

(5) The draft rule is hereby incorporated into these findings.

Thomas W. Easterly

Commissioner

Indiana Department of Environmental Management

REQUEST FOR PUBLIC COMMENTS

This notice requests the submission of comments on the draft rule language, including suggestions for specific revisions to language to be contained in the draft rule. Comments may be submitted in one of the following ways:

(1) By mail or common carrier to the following address:

LSA Document #13-502 SO₂ Designations

Zachary Ruzyski

Rule Development Branch

Office of Legal Counsel

Indiana Department of Environmental Management

Indiana Government Center North

100 North Senate Avenue

Mail Code 61-49

Indianapolis, IN 46204-2251

(2) By facsimile to (317) 233-5970. Please confirm the timely receipt of your faxed comments by calling the Rule Development Branch at (317) 233-8903.

(3) By electronic mail to zruzycki@idem.in.gov. To confirm timely delivery of your comments, please request a document receipt when you send the electronic mail. **PLEASE NOTE: Electronic mail comments will NOT be considered part of the official written comment period unless they are sent to the address indicated in this notice.**

(4) Hand delivered to the receptionist on duty at the thirteenth floor reception desk, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Indianapolis, Indiana.

Regardless of the delivery method used, to properly identify each comment with the rulemaking action it is intended to address, each comment document must clearly specify the LSA document number of the rulemaking you are commenting on.

COMMENT PERIOD DEADLINE

All comments must be postmarked, faxed, or time stamped not later than December 20, 2013.

Hand-delivered comments must be delivered to the appropriate office by 4:45 p.m. on the above-listed deadline date.

Additional information regarding this action may be obtained from Zachary Ruzyski, Rule Development Branch, Office of Legal Counsel, (317) 232-8229 or (800) 451-6027 (in Indiana).

DRAFT RULE

SECTION 1. [326 IAC 1-4-15](#) IS AMENDED TO READ AS FOLLOWS:

[326 IAC 1-4-15](#) Daviess County

Authority: [IC 13-14-8](#); [IC 13-17-3](#)

Affected: [IC 13-15](#); [IC 13-17](#)

Sec. 15. The following attainment status designations are applicable to Daviess County:

Pollutant	Designation
SO ₂	Nonattainment effective October 4, 2013, for the 2010 SO₂ standard for Veale Township. Better than national standards for the remainder of the county.
CO	Unclassifiable or attainment effective November 15, 1990.

O ₃	Unclassifiable or attainment effective July 20, 2012, for the 2008 8-hour ozone standard. ¹
PM _{2.5}	Unclassifiable or attainment effective April 5, 2005, for the annual PM _{2.5} standard.
PM _{2.5}	Unclassifiable or attainment effective December 13, 2009, for the 24-hour PM _{2.5} standard.
PM ₁₀	Unclassifiable effective November 15, 1990.
NO ₂	Cannot be classified or better than national standards.
Pb	Unclassifiable or attainment effective December 31, 2011.
¹ Unclassifiable or attainment effective October 18, 2000, for the 1-hour ozone standard which was revoked effective June 15, 2005.	

(Air Pollution Control Division; [326 IAC 1-4-15](#); filed Dec 26, 2007, 1:43 p.m.: [20080123-IR-326070308FRA](#); filed Jan 30, 2013, 12:34 p.m.: [20130227-IR-326110774FRA](#); filed Oct 25, 2013, 2:41 p.m.: [20131120-IR-326130164FRA](#))

SECTION 2. [326 IAC 1-4-50](#) IS AMENDED TO READ AS FOLLOWS:

[326 IAC 1-4-50](#) Marion County

Authority: [IC 13-14-8](#); [IC 13-17-3](#)

Affected: [IC 13-15](#); [IC 13-17](#)

Sec. 50. The following attainment status designations are applicable to Marion County:

Pollutant	Designation
SO ₂	Nonattainment effective October 4, 2013, for the 2010 SO₂ standard for Center, Perry, and Wayne townships. Better than national standards for the remainder of the county.
CO	Attainment effective February 18, 2000, for the part of the city of Indianapolis bounded by 11 th Street on the north; Capitol Avenue on the west; Georgia Street on the south; and Delaware Street on the east. Unclassifiable or attainment effective November 15, 1990, for the remainder of Indianapolis and Marion County.
O ₃	Unclassifiable or attainment effective July 20, 2012, for the 2008 8-hour ozone standard. ¹
PM _{2.5}	Attainment effective July 11, 2013, for the annual PM _{2.5} standard.
PM _{2.5}	Unclassifiable or attainment effective December 13, 2009, for the 24-hour PM _{2.5} standard.
PM ₁₀	Unclassifiable effective November 15, 1990.
NO ₂	Cannot be classified or better than national standards.
Pb	Unclassifiable or attainment effective December 31, 2011.
¹ Attainment effective October 18, 2000, for the 1-hour ozone standard for the Indianapolis area, including Marion County, and is a maintenance area for the 1-hour ozone National Ambient Air Quality Standards (NAAQS) for purposes of 40 CFR 51, Subpart X*. The 1-hour designation was revoked effective June 15, 2005.	

*These documents are incorporated by reference. Copies referenced in this section may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, Thirteenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.

(Air Pollution Control Division; [326 IAC 1-4-50](#); filed Dec 26, 2007, 1:43 p.m.: [20080123-IR-326070308FRA](#); filed May 14, 2008, 2:36 p.m.: [20080611-IR-326070840FRA](#); filed Jan 30, 2013, 12:34 p.m.: [20130227-IR-326110774FRA](#); filed Oct 25, 2013, 2:41 p.m.: [20131120-IR-326130164FRA](#))

SECTION 3. [326 IAC 1-4-56](#) IS AMENDED TO READ AS FOLLOWS:**[326 IAC 1-4-56](#) Morgan County****Authority:** [IC 13-14-8](#); [IC 13-17-3](#)**Affected:** [IC 13-15](#); [IC 13-17](#)

Sec. 56. The following attainment status designations are applicable to Morgan County:

Pollutant	Designation
SO ₂	Nonattainment effective October 4, 2013, for the 2010 SO₂ standard for Clay and Washington townships. Better than national standards for the remainder of the county.
CO	Unclassifiable or attainment effective November 15, 1990.
O ₃	Unclassifiable or attainment effective July 20, 2012, for the 2008 8-hour ozone standard. ¹
PM _{2.5}	Attainment effective July 11, 2013, for the annual PM _{2.5} standard.
PM _{2.5}	Unclassifiable or attainment effective December 13, 2009, for the 24-hour PM _{2.5} standard.
PM ₁₀	Unclassifiable effective November 15, 1990.
NO ₂	Cannot be classified or better than national standards.
Pb	Unclassifiable or attainment effective December 31, 2011.
¹ Unclassifiable or attainment effective October 18, 2000, for the 1-hour ozone standard, which was revoked effective June 15, 2005.	

(Air Pollution Control Division; [326 IAC 1-4-56](#); filed Dec 26, 2007, 1:43 p.m.: [20080123-IR-326070308FRA](#); filed May 14, 2008, 2:36 p.m.: [20080611-IR-326070840FRA](#); filed Jan 30, 2013, 12:34 p.m.: [20130227-IR-326110774FRA](#); filed Oct 25, 2013, 2:41 p.m.: [20131120-IR-326130164FRA](#))

SECTION 4. [326 IAC 1-4-64](#) IS AMENDED TO READ AS FOLLOWS:**[326 IAC 1-4-64](#) Pike County****Authority:** [IC 13-14-8](#); [IC 13-17-3](#)**Affected:** [IC 13-15](#); [IC 13-17](#)

Sec. 64. The following attainment status designations are applicable to Pike County:

Pollutant	Designation
SO ₂	Nonattainment effective October 4, 2013, for the 2010 SO₂ standard for Washington Township. Better than national standards for the remainder of the county.
CO	Unclassifiable or attainment effective November 15, 1990.
O ₃	Unclassifiable or attainment effective July 20, 2012, for the 2008 8-hour ozone standard. ¹
PM _{2.5}	Attainment effective October 27, 2011, for the annual PM _{2.5} standard for Washington Township. Unclassifiable or attainment effective April 5, 2005, for the annual PM _{2.5} standard for the remainder of the county.
PM _{2.5}	Unclassifiable or attainment effective December 13, 2009, for the 24-hour PM _{2.5} standard.
PM ₁₀	Unclassifiable effective November 15, 1990.
NO ₂	Cannot be classified or better than national standards.
Pb	Unclassifiable or attainment effective December 31, 2011.
¹ Unclassifiable or attainment effective October 18, 2000, for the 1-hour ozone standard which was revoked effective June 15, 2005.	

(Air Pollution Control Division; [326 IAC 1-4-64](#); filed Dec 26, 2007, 1:43 p.m.: [20080123-IR-326070308FRA](#); filed Jun 7, 2012, 11:21 a.m.: [20120704-IR-326110742FRA](#); filed Jan 30, 2013, 12:34 p.m.: [20130227-IR-326110774FRA](#); filed Oct 25, 2013, 2:41 p.m.: [20131120-IR-326130164FRA](#))

SECTION 5. [326 IAC 1-4-85](#) IS AMENDED TO READ AS FOLLOWS:

[326 IAC 1-4-85](#) Vigo County

Authority: [IC 13-14-8](#); [IC 13-17-3](#)

Affected: [IC 13-15](#); [IC 13-17](#)

Sec. 85. The following attainment status designations are applicable to Vigo County:

Pollutant	Designation
SO ₂	Nonattainment effective October 4, 2013, for the 2010 SO₂ standard for Fayette and Harrison townships. Better than national standards for the remainder of the county.
CO	Unclassifiable or attainment effective November 15, 1990.
O ₃	Unclassifiable or attainment effective July 20, 2012, for the 2008 8-hour ozone standard. ¹
PM _{2.5}	Unclassifiable or attainment effective April 5, 2005, for the annual PM _{2.5} standard.
PM _{2.5}	Unclassifiable or attainment effective December 13, 2009, for the 24-hour PM _{2.5} standard.
PM ₁₀	Unclassifiable effective November 15, 1990.
NO ₂	Cannot be classified or better than national standards.
Pb	Unclassifiable or attainment effective December 31, 2011.
¹ Unclassifiable or attainment effective October 18, 2000, for the 1-hour ozone standard which was revoked effective June 15, 2005.	

(Air Pollution Control Division; [326 IAC 1-4-85](#); filed Dec 26, 2007, 1:43 p.m.: [20080123-IR-326070308FRA](#); filed Jan 30, 2013, 12:34 p.m.: [20130227-IR-326110774FRA](#); filed Oct 25, 2013, 2:41 p.m.: [20131120-IR-326130164FRA](#))

[Notice of Public Hearing](#)

Posted: 11/20/2013 by Legislative Services Agency

An [html](#) version of this document.